

## **Appellate Court Decisions - Week of 1/28/19**

*Note: This is not a comprehensive list of every case released this week.*

### **First Appellate District of Ohio**

#### **State v. Johnson, 2019-Ohio-287**

#### **Appellate Review**

#### **Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-287.pdf>**

#### **Summary from the First District:**

**“Appellate review is strictly limited to the record on appeal which consists of three categories of documents identified in App.R. 9: the original papers and exhibits thereto filed in the trial court; the transcript of proceedings, if any, including exhibits; and a certified copy of the docket and journal entries prepared by the clerk of the trial court. The appellant bears the burden of identifying in the record the error on which an assignment of error is based; when an appellant relies upon facts shown in a transcript of proceedings, that duty includes the obligation to order a transcript of any proceedings he considers necessary for inclusion in the record, and to ensure that the transcript of the proceedings is filed with the clerk of the trial court under App.R. 10(A).**

**“When an appellant has failed in his duty to ensure that the record on appeal includes the items necessary to the resolution of the assigned errors, the reviewing court presumes the regularity of the lower court’s proceedings.**

**“A reviewing court cannot rely on matters raised in briefs, or attached thereto, but not supported in the record, to resolve assignments of error. When the record on appeal is silent as to what transpired in the juvenile court and does not reflect any claimed defect in the adult court’s subject-matter jurisdiction, a reviewing court cannot sustain the appellant’s assignments of error challenging that jurisdiction.**

**“When an appellant has failed to ensure that the record on appeal contains transcripts of the evidentiary hearings before the juvenile court, or the juvenile court’s rulings on those evidentiary matters, including whether there was probable cause to believe that the appellant had used a firearm to commit aggravated robbery, whether other offenses at issue arose from a common nucleus of operative facts with the firearm offense, whether the**

**appellant was amenable to rehabilitation as a juvenile, and the juvenile court’s entries actually transferring jurisdiction to the trial court and characterizing whether those transfers were mandatory or discretionary, a reviewing court cannot reach assignments of error alleging that the trial court improperly exercised jurisdiction over the appellant.”**

***In re D.J., 2019-Ohio-288***

**Juvenile Bindover**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-288.pdf>**

**Summary from the First District:**

**“Appellate review is strictly limited to the record on appeal which consists of three categories of documents identified in App.R. 9: the original papers and exhibits thereto filed in the trial court; the transcript of proceedings, if any, including exhibits; and a certified copy of the docket and journal entries prepared by the clerk of the trial court.**

**“When an appellant has failed in his duty to ensure that the record on appeal includes the items necessary to the resolution of the assigned errors, the reviewing court presumes the regularity of the lower court’s proceedings.**

**“The juvenile court’s entry of dismissal for want of prosecution was not a determination that the juvenile was delinquent, left the parties as if the action had never been commenced, and did not affect the juvenile’s substantial rights; thus the juvenile court’s entry, entered in a special proceeding, was not a final order under R.C. 2505.02(B)(2). Ordinarily, R.C. 2152.12(B) permits a juvenile court to order the transfer of a discretionary-transfer delinquency case only if the court has found at a hearing, inter alia, that the child was not amenable to care or rehabilitation within the juvenile system and should be subject to adult sanctions to ensure the safety of the community; but a juvenile court may transfer jurisdiction of a discretionary-transfer delinquency case without an amenability hearing as long as it has found probable cause to believe that the juvenile also committed a mandatory-transfer offense and that both the mandatory-transfer offense and the additional discretionary charges arose from a common nucleus of operative facts.**

**“Where there is no evidence of record that a discretionary-transfer delinquency case and a mandatory-transfer delinquency case, which included acts committed by the same juvenile, arose from a common nucleus of operative facts, the juvenile court is not relieved of the**

requirement under R.C. 2152.12(B) to conduct further hearings or to make findings with respect to the juvenile's eligibility to be tried as a juvenile.

**“When a juvenile court’s entry improperly transfers jurisdiction to an adult court that then exercises that flawed jurisdiction, including a remand to the juvenile court under the reverse-bindover scheme, every subsequent entry of record is a legal nullity. An appeal is commenced only by the timely filing of a notice of appeal; the failure to file a notice of appeal deprives an appellate court of jurisdiction to review the lower court’s actions. Absent a proper bindover procedure, the juvenile court has the exclusive subject-matter jurisdiction over any case concerning a child who is alleged to be a delinquent, and thus a judgment imposed by a court that lacks subject-matter jurisdiction is void.”**

### **Second Appellate District of Ohio**

*Nothing to report.*

### **Third Appellate District of Ohio**

*Nothing to report.*

### **Fourth Appellate District of Ohio**

#### **State v. Gaffin, 2019-Ohio-291**

**Post-Conviction**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2019/2019-Ohio-291.pdf>**

**The trial court erred in denying Appellant’s petition for postconviction relief without a hearing. It erred in finding certain affidavits partially inadmissible under Evid.R. 608(B), when they would have been admissible under Evid.R. 613(C). Appellant also established that he received ineffective assistance of trial counsel. Trial counsel failed to call a majority of the witnesses he subpoenaed, and affidavits showed he failed to interview nearly 10 of those witnesses.**

### **Fifth Appellate District of Ohio**

*Nothing to report.*

## **Sixth Appellate District of Ohio**

***State v. Villolovos, 2019-Ohio-241***

**Motion to Suppress: Search**

**Full Decision:**

**<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-241.pdf>**

**Summary from the Sixth District: “Trial court properly suppressed evidence. DVR system not properly seized because it was not specified and did not fit naturally into items specified in search warrant. Plain view exception inapplicable because incriminating nature of DVR system not immediately apparent. Good-faith exception to exclusionary rule inapplicable because reasonably well-trained officer would have known that wording of warrant did not encompass DVR system.”**

## **Seventh Appellate District of Ohio**

***Nothing to report.***

## **Eighth Appellate District of Ohio**

***Nothing to report.***

## **Ninth Appellate District of Ohio**

***Nothing to report.***

## **Tenth Appellate District of Ohio**

***Nothing to report.***

## **Eleventh Appellate District of Ohio**

***Nothing to report.***

## **Twelfth Appellate District of Ohio**

***Nothing to report.***

## **Supreme Court of Ohio**

***Nothing to report.***

**Sixth Circuit Court of Appeals**

*Nothing to report.*

**Supreme Court of the United States**

*Nothing to report.*